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The Honorable Judge Michael Hayden

KING COUNTY
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STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

JOAN BURLINGAME, an individual;
LEE BERNHEISEL, an individual;
SCOTT CORNELIUS, an individual;
PETER KNUTSON, an individual;
PUGET SOUND HARVESTERS;
WASHINGTON ENVIRONMENTAL
COUNCIL; SIERRA CLUB; and THE
CENTER FOR ENVIRONMENTAL
LAW AND POLICY,

Plaintiffs,

v.

STATE OF WASHINGTON,
WASHINGTON STATE
DEPARTMENT OF ECOLOGY, and
WASHINGTON STATE
DEPARTMENT OF HEALTH,

Defendants.

NO. 06-2-28667-7 SEA

ANSWER OF DEFENDANTS
STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY
AND DEPARTMENT OF HEALTH, TO
PLAINTIFFS' COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF

Defendants State of Washington, Department of Ecology, and Department of Health,
(collectively "Defendants") through their attorneys of record, Alan M. Reichman, Mark H.
Calkins, and Stephen H. North, Assistant Attorneys General, in answer to Plaintiffs'
Complaint, admit, deny, and allege as follows:

Under Civil Rule (CR) 8, Defendants generally deny each and every allegation of the

ANSWER OF DEFENDANTS
STATE OF WASHINGTON, DEPARTMENT OF
ECOLOGY AND DEPARTMENT OF HEALTH,
TO PLAINTIFFS' COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF

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1 Complaint not expressly admitted. Defendants also expressly deny some allegations without
2 affecting their general denial of other allegations. Defendants will not respond to allegations that
3 present purely legal conclusions or arguments. If an answer to any such allegation is required,
4 Defendants deny each such allegation that is not expressly admitted.
5

6 In addition to the above general responses, Defendants offer the following responses to the
7 specific allegations set forth in each numbered paragraph of Plaintiffs' Complaint.

8 INTRODUCTION

9 1. Defendants admit the first and third sentences of paragraph 1, and deny the second
10 sentence. Insofar as any of this paragraph sets forth legal conclusions or argument, no response is
11 required.
12

13 2. Defendants admit the first two sentences of paragraph 2. Defendants also admit
14 that many over-appropriated watersheds in Washington contain salmon bearing streams, and
15 that the Department of Ecology has by regulation closed many streams to new water rights.
16 Defendants are without sufficient information to form a belief as to the alleged specific
17 quantity of over-appropriated watersheds containing salmon bearing streams or streams closed
18 to new water rights by regulation. Insofar as any of this paragraph sets forth legal conclusions or
19 argument, no response is required.
20

21 3. Admit.

22 4. Defendants deny the allegations contained in paragraph 4. Insofar as any of this
23 paragraph sets forth legal conclusions or argument, no response is required.

24 5. Defendants deny the allegations contained in paragraph 5. Insofar as any of this
25 paragraph sets forth legal conclusions or argument, no response is required.
26

6. Defendants deny the allegations contained in paragraph 6. Insofar as any of this paragraph sets forth legal conclusions or argument, no response is required.

7. Deny.

PARTIES

Plaintiffs

8. Defendants deny the allegations in paragraph 8 because Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations. Insofar as any of this paragraph sets forth legal conclusions or argument, no response is required.

9. Defendants deny the allegations in paragraph 9 because Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations. Insofar as any of this paragraph sets forth legal conclusions or argument, no response is required.

10. Defendants deny the allegations in paragraph 10 because Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations. Insofar as any of this paragraph sets forth legal conclusions or argument, no response is required.

11. Defendants deny the allegations in paragraph 11 because Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations.

12. Defendants deny the allegations in the paragraph 12 because Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations. Insofar as any of this paragraph sets forth legal conclusions or argument, no response is required.

13. Defendants deny the allegations in paragraph 13 because Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations.

14. Defendants deny the allegations in paragraph 14 because Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations. Insofar as any of this paragraph sets forth legal conclusions or argument, no response is required.

15. Defendants deny the allegations in the paragraph 15 because Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations.

16. Admit

17. Defendants admit the allegations in paragraph 17. Insofar as any of this paragraph sets forth legal conclusions or argument, no response required.

18. Admit.

JURISDICTION, VENUE, AND STANDING

19. Defendants deny that this Court has jurisdiction over this action under RCW 2.08.010. Defendants admit that this is an action against the State under RCW 4.92.010, for declaratory judgment under RCW 7.24.010, and for injunctive relief under RCW 7.40.010.

20. Defendants deny the allegations in paragraph 20 because Defendants are without knowledge or sufficient information to form a belief as to the truth of the allegations. Insofar as any of this paragraph sets forth legal conclusions or argument, no response is required.

21. Defendants admit the allegation contained in paragraph 21. Insofar as any of this paragraph sets forth legal conclusions or argument, no response is required.

22. Admit.

23. Defendants deny the allegations in paragraph 23 because Defendants are without knowledge or sufficient information to form a belief as to the truth of the allegations. Insofar as any of this paragraph sets forth legal conclusions or argument, no response is required.

1 24. Defendants deny the allegations in paragraph 24 because Defendants are without
2 knowledge or sufficient information to form a belief as to the truth of the allegations. Insofar as
3 any of this paragraph sets forth legal conclusions or argument, no response is required.

4 25. Defendants admit the allegations in the first sentence of paragraph 25, and deny
5 the allegations in the rest of this paragraph. Insofar as any of this paragraph sets forth legal
6 conclusions or argument, no response is required.

7 26. Defendants admit that Plaintiffs requested the Attorney General to take action to
8 invalidate alleged unconstitutional provisions of the Municipal Water Law in a letter dated
9 June 8, 2006, and that in a response letter dated June 29, 2006, the Attorney General declined to
10 take the requested action. Insofar as any of this paragraph sets forth legal conclusions or
11 argument, no response is required.

12 27. Deny.

13 BACKGROUND

14 Washington Water Law

15 28. Defendants deny this paragraph on the ground that the chapters of the Revised
16 Code of Washington cited by Plaintiffs are not the only chapters that govern generally the use of
17 water in Washington. While Defendants admit the cited chapters govern water use in
18 Washington, the Plaintiffs have omitted other relevant statutes. Insofar as any of this paragraph
19 sets forth legal conclusions or argument, no response is required.

20 29. Defendants deny the allegations in paragraph 29. Insofar as any of this paragraph
21 sets forth legal conclusions or argument, no response is required.

1 30. Defendants admit that "[r]ecognized 'beneficial' uses include irrigation, domestic
2 water supply, industry, power generation, and protection of instream flows for fisheries,
3 recreation, and other uses." Defendants deny the remaining allegations in paragraph 30. Insofar
4 as any of this paragraph sets forth legal conclusions or argument, no response is required.
5

6 31. Defendants admit the first two sentences of this paragraph. Defendants deny the
7 third sentence of this paragraph. Insofar as any of this paragraph sets forth legal conclusions or
8 argument, no response is required.

9 32. Defendants admit the first, second, third, fourth, and sixth sentences of this
10 paragraph. Defendants deny the fifth sentence of this paragraph. Insofar as any of this paragraph
11 sets forth legal conclusions or argument, no response is required.
12

13 The Supreme Court Ruling in Theodoratus

14 33. Defendants admit the allegation in paragraph 33. Insofar as any of this paragraph
15 sets forth legal conclusions or argument, no response is required.

16 34. Defendants deny the allegations in paragraph 34. Insofar as any of this paragraph
17 sets forth legal conclusions or argument, no response is required.

18 35. Admit.

19 36. Defendants deny the first sentence on the ground that the Plaintiffs' assertion that
20 the bill passed in 1997 contained provisions similar to those in SESSHB 1338 is incorrect.
21 Defendants deny the second sentence on the ground the Plaintiffs' characterization that the
22 portions of the bill vetoed by Governor Locke would have retroactively expanded municipal water
23 rights is incorrect. Insofar as any of this paragraph sets forth legal conclusions or argument, no
24 response is required.
25
26

37. Defendants deny the allegation in paragraph 37. Insofar as any of this paragraph sets forth legal conclusions or argument, no response is required.

38. Defendants deny the allegation in the first sentence of paragraph 38. Defendants admit the second, third, and fourth sentences of this paragraph. Defendants deny the fifth sentence of this paragraph because they are without knowledge or information sufficient to form a belief as the truth of this allegation. Insofar as any of this paragraph sets forth legal conclusions or argument, no response is required.

39. Defendants deny the allegations in paragraph 39. Insofar as any of this paragraph sets forth legal conclusions or argument, no response is required.

40. Defendants deny the allegations in paragraph 40. Insofar as any of this paragraph sets forth legal conclusions or argument, no response is required.

41. Defendants deny the allegations in paragraph 41. Insofar as any of this paragraph sets forth legal conclusions or argument, no response is required.

CAUSES OF ACTION

42. Deny.

COUNT I: SECTIONS 1(3), 1(4), AND 6(3)
OF THE MUNICIPAL WATER LAW VIOLATE
THE SEPARATION OF POWERS

43. Defendants incorporate by reference Defendants' answers to paragraphs 1 through

42.

44. No response is required because this paragraph sets forth legal conclusions or argument.

1 45. No response is required because this paragraph sets forth legal conclusions or
2 argument.

3 46. Defendants admit the first sentence of paragraph 46 and deny the second
4 sentence. Insofar as any of this paragraph sets forth legal conclusions or argument, no
5 response is required.

6 47. Deny.

7 48. Deny.

8 49. Deny.

9 50. Defendants incorporate by reference Defendants' answers to paragraphs 1 through
10 49.

11 51. No response is required because this paragraph sets forth legal conclusions or
12 argument.

13 52. No response is required because this paragraph sets forth legal conclusions or
14 argument.

15 53. No response is required because this paragraph sets forth legal conclusions or
16 argument.

17 54. Deny.

18 55. Deny.

19 56. Deny.

20 57. Defendants incorporate by reference Defendants' answers to paragraphs 1 through
21 56.

22 58. No response is required because this paragraph sets forth legal conclusions or
23 argument.

1 59. No response is required because this paragraph sets forth legal conclusions or
2 argument.

3 60. No response is required because this paragraph sets forth legal conclusions or
4 argument.

5 61. Deny.

6 62. Deny.

7 63. No response is required because this paragraph sets forth legal conclusions or
8 argument.
9

10 64. Defendants deny the allegations in paragraph 64. Insofar as any of this paragraph
11 sets forth legal conclusions or argument, no response is required.

12 65. Defendants admit the allegations in paragraph 65. Insofar as any of this paragraph
13 sets forth legal conclusions or argument, no response is required.
14

15 66. Deny.

16 67. Defendants deny the allegation in paragraph 67. Insofar as any of this paragraph
17 sets forth legal conclusions or argument, no response is required.

18 68. Deny.

19 69. Defendants admit the allegations through the word "necessary" in paragraph 69.
20 Defendants deny the rest of the paragraph because Defendants are without knowledge or
21 sufficient information to form a belief as to the truth of the allegations. Insofar as any of this
22 paragraph sets forth legal conclusions or argument, no response is required.
23

24 70. Deny.
25
26

71. Defendants deny that Plaintiffs are entitled to any relief requested in paragraphs 71 A through H.

AFFIRMATIVE DEFENSES

By way of further answer and affirmative defenses, Defendants allege that:

A. Plaintiffs have failed to state a claim upon which relief can be granted.

B. Plaintiffs' claims are not ripe and/or justiciable. This case is not presently fit for review.

C. Defendants reserve the right to supplement these affirmative defenses as new defenses may be revealed during the course of discovery.

WHEREFORE, Defendants request an order:

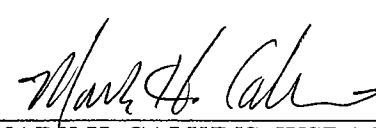
1. Dismissing this action with prejudice;
2. Denying Plaintiffs' requested relief;
3. Granting Defendants their costs and reasonable attorneys' fees herein; and
4. Granting the Defendants such additional relief the court finds appropriate or just.


DATED this 26th day of September, 2006.

ROB MCKENNA
Attorney General

ROB MCKENNA
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ANSWER OF DEFENDANTS
STATE OF WASHINGTON, DEPARTMENT OF
ECOLOGY AND DEPARTMENT OF HEALTH,
TO PLAINTIFFS' COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF

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PROOF OF SERVICE

I certify that I served a copy of the *Answer of Defendants State of Washington, Department of Ecology, and Department of Health, to Plaintiffs' Complaint for Declaratory and Injunctive Relief* on all parties or their counsel of record on the date below as follows:

☐ US Mail Postage Prepaid via Consolidated Mail Service

☒ ABC/Legal Messenger to:

BARB MINER, CLERK
KING COUNTY SUPERIOR COURT
516 - THIRD AVENUE, RM E-609
SEATTLE, WA 98104

THE HONORABLE MICHAEL HAYDEN
KING COUNTY SUPERIOR COURT
516 THIRD AVENUE, RM C-203
SEATTLE, WA 98104

PATTI GOLDMAN
SHAUN GOHO
EARTHJUSTICE
705 SECOND AVENUE, SUITE 203
SEATTLE, WA 98104

☐ State Campus Delivery

☐ Hand delivered by _____

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 26th day of September, 2006, at Olympia, WA.



LINDA HUMPHREY
Legal Assistant